

**NORTH CAROLINA COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL  
DISABILITIES AND SUBSTANCE ABUSE SERVICES**

**Commission Minutes**

**DoubleTree Hotel  
1707 Hillsborough Street  
Raleigh, NC 27605  
Thursday, February 27, 2014**

**Attending:**

Greg Olley, James R. Bowman, Amie Brendle, Anna Cunningham, Roger Dillard, John Emerson, Melissa Gott, Tyehimba Hunt-Harrison, Michael Maybee, Nancy Moore, Roger Moore, Beverly Morrow, Kevin Oliver, John Owen, Pamela Poteat, Elizabeth Ramos, Ann Shaw, Brian Sheitman, Marian Spencer, Peggy Terhune, Don Trobaugh, Stephanie Tyson, Carol Vale

**Excused Absences:**

James Finch, R. Michael Grannis, Haresh M. Tharwani, Linda C. Warden, David Turpin

**Division Staff:**

Dave Richard, Jim Jarrard, W. Denise Baker, Marta T. Hester, Susan M. Kelley, Glenda Stokes

**Others:**

Sally Herdon, Susan Peebles, Jim Martin, Joyce Swetlick, Stephanie Gilliam, Margot A. Withrow, Jessica Keith

**Call to Order:**

Dr. Greg Olley, Chairman, NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (Commission), called the meeting to order at 9:40 a.m. He asked for a moment of reflection, welcomed everyone to the meeting, and reviewed the ethics reminder. Dr. Olley also mentioned the ethics training requirements, meeting agenda changes and procedures for completing the travel reimbursement forms. Following introductions and approval of the minutes, Dr. Olley delivered the Chairman's Report.

**Approval of Minutes:**

*Upon motion, second, and unanimous vote, the Commission approved the minutes of the November 21, 2013 meeting.*

**Chairman's Report:**

Dr. Olley advised the Commission the leadership of the Commission and the NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (NC DMH/DD/SAS) met to discuss a plan for complying with NC General Statute 150B-21.3A, *Periodic Review and Expiration of Existing Rules*. The plan will be presented as an agenda item during the afternoon session of the day's meeting.

**Old Business:**

Dr. Olley advised there was no old business to report.

**New Business:**

Dr. Olley advised there was no new business to report.

### **Advisory Committee Report:**

Anna Cunningham, Chairperson, Advisory Committee, provided the Commission with an update of the Advisory Committee meeting held on January 23, 2014. At the meeting, Ms. Cunningham reviewed and disseminated two handouts on the Advisory Committee's Mission Statement and the goals and mission of the workgroups: Communication/Accessibility in Community Infrastructure and Public Services and Individual Rights and Quality MHDDSA Services. She also asked Dr. Olley to briefly discuss the need and opportunity for the Advisory Committee to work on some related issues involving rulemaking with the Rules Committee. She indicated the Committee will need to prioritize its activities and decide where rulemaking should be placed on its working matrix. Ms. Cunningham noted the future role of the Advisory Committee will be discussed as part of the Commission's plan for complying with NC General Statute 150B-21.3A by Dr. Olley during the afternoon's session. W. Denise Baker, Division Affairs Team Leader, Operations Support Section, NC DMH/DD/SAS, briefed the Advisory Committee on the process and role of the NC Commission for MH/DD/SAS (and Rules Committee) in complying with the Periodic Review and Termination of Existing Rules.

There were two presenters during the Advisory Committee meeting: Emery Cowan and Sally Cameron. Emery Cowan, Adult Mental Health & Employment Services Lead, Best Practice and Community Innovations Team, Community Policy Management Section, NC DMH/DD/SAS, presented a powerpoint presentation on *Transitions to Community Living Initiative: Services and Supports*. Ms. Cowan's presentation discussed the guiding principles of the NC Settlement Agreement with the NC Department of Justice based on the Americans with Disabilities Act (ADA) and the Olmstead Act. She indicated that Supported Employment (SE) is often the trigger for people's recovery. Sally Cameron, Executive Director, NC Psychological Association, and Chairperson, Professional Association Council (PAC), presented a PowerPoint presentation on *Licensed Independent Professional and the Public MH/DD/SA System*. As part of the presentation, Ms. Cameron discussed PAC's goals; the role of the licensed independent professional in the public mh/dd/sa system; steps being taken to move forward; workforce development needs; and moving the system forward to fill gaps in services.

### **Rules Committee Report:**

Kevin Oliver, Chairman, Rules Committee, advised the following rules were presented at the Rules Committee meeting on Thursday, January 23, 2014, and will be again at the Full Commission meeting: Mr. Oliver also mentioned Ms. Baker briefed the Rules Committee on the *Periodic Review and Termination of Existing Rules* as required by NC General Statute 150B-21.3A.

### **Rule 10A NCAC 27C .0201 – State Facility Environment**

This rule was presented by Susan Saik Peebles, M.D., Medical Director, NC Division of State Operated Healthcare Facilities. It is proposed that the rule be amended to remove the provision that adequate areas that are accessible to patients/residents who wish to smoke tobacco be provided at the state operated facilities. This is a Commission Rule.

### **Rule 10A NCAC 27G .0504 – Local Management Entity Client Rights Committee and Provider Client Rights Committee**

This rule was presented by W. Denise Baker, Division Affairs Team Leader, Operations Support Section, and Glenda Stokes Acting Section Chief, Advocacy and Customer Services Section, NC DMH/DD/SAS. This rule amends the current Client Rights Committee rule; specifies Local Management Entity (LME) Board requirements to oversee the committees; and specifies LME and provider committee duties and responsibilities. It is a Commission rule.

### **Proposed Amendment of Rule 10A NCAC 28C .0201 State Facility Environment**

Dr. Susan Saik Peebles, Medical Director, NC Division of State Operated Healthcare Facilities, presented the proposed amendment of Rule 10A NCAC 28C .0201 State Facility Environment. This is a

Commission rule and was presented for final adoption. It is proposed that the rule be amended to remove the provision that adequate areas that are accessible to patients/residents who wish to smoke tobacco be provided at the state operated facilities. Dr. Peebles stated one public comment was received on the rule during the public comment period; the comment was submitted by the American Heart Association, which provided support for the proposed amendment. Dr. Peebles also mentioned the results of the pilot study at the Walter B. Jones Facility conducted before moving forward with the proposed amendment of this rule.

***Upon motion, second, and unanimous vote, the Commission approved the adoption of the proposed amendment of Rule 10A NCAC 28C .0201 State Facility Environment.***

**Proposed Amendment of Rule 10A NCAC 27G.0504 Local Management Entity (LME) Client Rights Committee and Provider Client Right Committee**

Ms. Baker presented the proposed changes on the LME Clients Rights Committee and Provider Client Rights Committee rules. Ms. Baker reviewed the technical changes recommended by the Rules Review Commission (RRC) and advised the RRC objected to the rule based on the lack of statutory authority of the Commission. Specifically, G.S. 122C-64, which provided statutory authority for the rule, requires that each county in the LME's catchment area be represented on the Committee. The RRC opined that the Commission is without authority to require representation from less than 100% of the counties in the LME catchment area. Ms. Baker mentioned that the Commission could vote to accept the recommendations of the RRC and change the rule accordingly or could consider withdrawing the rule from consideration at this time. Ms. Baker reminded the Commission that the system has changed drastically since the proposed rule changes were originally made with it's having moved from a configuration of LMEs to LME-MCOs to the current plan that there be four LME-MCOs statewide; the current statute requires, and the rule must reflect, that the Committees of each of the four remaining LME-MCOs have a representative from each of the counties in its respective catchment area. Ms. Baker commented that the rule has been modified since its publication to clarify the definition of provider as used therein. While that was not deemed a substantial change, it is one made subsequent to publication. Overall, the Commission needs to consider the ongoing evolution of the system and whether this rule reflects the known changes underway.

Ms. Baker received the following questions and comments regarding Rule 10A NCAC 27G.0504 from members of the Commission.

- John Owen asked if state hospitals have Client Rights Committees that are not covered by the rule. Ms. Baker responded that the facilities do have Patient Rights Committees, which function similarly.
- Dr. Olley questioned whether the Commission should move forward and if there would be any legal consequences regarding the delay.
- Michael Maybee recommended the rule be tabled due to the number of changes being made to the mh/dd/sas system statewide.
- Dr. Peggy Terhune briefed the members on her discussion with Representative Nelson Dollar and Dr. Pat Porter at the NC General Assembly and their interest in changing the rule along with Disability Rights of NC. Ms. Baker stated Disability Rights was involved with the rule changes from inception and representatives of Disability Rights were members of the group that worked to amend the rule language. Dr. Terhune added Representative Dollar and Dr. Porter noted the NC General Assembly believes NC General Statute 122C needs to be overhauled and a study committee or work group needs to address this issue.
- Ms. Cunningham added the rule still needs to be kept as a top priority even if it is currently being tabled.

*Upon motion, second, and unanimous vote, the Commission moved to withdraw the rule but to keep it as a key priority item and address it again following the adjournment of the legislative session.*

**Update: Proposed Amendment of Rule 10A NCAC 27H .0200 Training and Registration of Forensic Evaluators and Proposed Amendment of Rule 10A NCAC 27G .6702 Operations (Forensic Screening and Evaluation Services for Individuals of all Disability Groups)**

Ms. Baker provided an update on the proposed amendment of the Training and Registration of Forensic Evaluators rules and the Forensic Screening and the Operations (Evaluation Services for Individuals of all Disability Groups) rules. The RRC objected to the rules as to whether the criteria were met to establish temporary rules, the ambiguity of some of the rule language, and questioned the statutory authority of the Commission to impose some of the requirements set forth in the rules; Ms. Baker reviewed the objections and advised that she had consulted with the Attorney General's office in responding to the objections raised by the RRC. Ms. Baker stated that the Commission could work to overcome the objections of the RRC or could withdraw the temporary rules and move forward with the permanent rules ensuring that the objections raised now are addressed in the permanent version of the rules.

*Upon motion, second and unanimous vote, the Commission moved to withdraw the temporary rules and address the concerns made by the RRC regarding the temporary rules by making the changes in the permanent rules. The changes will be handled by the Rules Committee and presented to the Full Commission for final adoption.*

**U.S. Department of Justice Agreement Implementation:**

Jessica Bradley Keith, Special Advisor on ADA and Olmstead, NC Department of Health and Human Services (NC DHHS), presented and disseminated two handouts: *Transitions to Community Living* and *Transitions to Community Living Update as of February 26, 2014*. Ms. Keith explained the Transitions to Community Living Initiative is a voluntary agreement between the NC Department of Justice and the NC DHHS designed to ensure individuals have an opportunity to transition with supports and services, if needed. The primary population is individuals with serious, severe and persistent mental illnesses coming out of the state hospitals and transitioning into group homes and adult care homes. She also discussed the settlement agreement roles of the NC DHHS and the Managed Care Organizations (MCOs): Supportive Housing Slots; Supported Employment and Next Steps.

Ms. Keith received the following questions and comments from the Commission:

- Mr. Maybee questioned the origin of the Dartmouth Fidelity piece and Ms. Keith advised she will follow up with Emery Cowan about that.
- Mr. Owen inquired as to whether the state is on target with the settlement agreement, and Ms. Keith responded yes.
- Ms. Cunningham asked whether a root cause analysis of individuals who choose to return to their original setting is being collected.
- Dr. Terhune indicated that there is a discriminating factor involving the GED and requested Ms. Keith follow up to investigate/address that possibility.
- Elizabeth Ramos questioned if there was a place for individuals to go for substance abuse treatment and if funding were available to address this need; Ms. Keith responded yes.
- Beverly Morrow, Commission member, stated some individuals need long term support, and such services should be available. Ms. Keith advised decisions are made to encompass the entire system, and in order for transitions to community living to work it must be a part of the service system.
- Ms. Baker, NC DMH/DD/SAS, inquired about the percentage of individuals served under the agreement who have guardians. Ms. Keith stated she did not have the information on-site; however, the relationship between the guardian and the consumer is handled on a case-by-case basis.

- In response to a question from Mr. Maybee, Ms. Keith advised the state must make a good faith effort to meet the requirements of the agreement, as the reviewer can request numbers at any time.

### **Division Director's Report**

Dave Richard, Director, NC DMH/DD/SAS, began his presentation by advising that the agency has spent a great deal of time working with Ms. Keith on the DOJ settlement. He also said his report to the Commission will focus on Medicaid Reform, crisis issues, and Intellectual/Developmental Disabilities (IDD). He mentioned Dr. Terhune is one of the members of the Medicaid Reform Advisory Group and agreed to send slides presented to the group to the Commission. The proposal on Medicaid Reform will be delivered to the NC General Assembly on March 17, 2014. The plan focuses on the following: dealing with the whole person, engaging stakeholders to include families and consumers; and coordination of care. There will be four (4) Local Management Entities-Managed Care Organizations (LME-MCOs) in the state and contracts to implement integrated care. The LME-MCOs work will be consistent with the timelines and recommendation outlined in Session Law 2011-164 (House Bill 916), *An Act to Establish Requirements for the DHHS and LMEs with respect to Statewide Expansion of the 1915(B)(C) Medicaid Waiver*. Mr. Richard also announced the appointment of Dr. Robin Cummings as Director of the NC Division of Medical Assistance and recommended the Commission invite him to attend the next meeting. He also mentioned the state's new Mental Health First Aid Program initiative. Mr. Richard received several questions and comments from the Commission.

- Ms. Ramos asked if there would be any changes for the Alcohol and Drug Abuse Treatment Centers (ADATCs), and Mr. Richard responded the ADATCs are needed, because there are no alternatives. Ms. Ramos added the research proves the longer individuals are in treatment, the more successful the outcome and commented that the legislature needs to know this information.
- Don Trobaugh, Commission member, advised 80% of mergers fail because of the culture and asked about measures and manpower in place to ensure its success, to which Mr. Richard responded there are people in place who are skilled in mergers, culture, and business to address these issues. He also added if there is an issue at the county level, it will be communicated to DHHS in a timely manner.

### **NC General Statute 150B-21.3A Periodic Review and Expiration of Existing Rules**

Ms. Baker disseminated and reviewed handouts on the Periodic Review and Expiration of Existing Rules. As part of her presentation she reviewed the three (3) steps involved in the review process cited in the legislation, and discussed the role of the MH/DD/SAS Commission as part of the process.

### **Commission's Plan for Complying with NCGS 150B-21.3A**

Dr. Olley advised the Commission to use caution during their review of the rules to ensure they do not recommend a rule as unnecessary only later to discover it is needed. He directed the Advisory Committee members to let Ms. Baker know if they are interested in working on the rules review process under NC General Statute 150B-21.3A. Dr. Olley also asked Mr. Oliver to establish smaller work groups to review the rules during the interim and provide an update at the next meeting. He requested a status report on the prison rules in response to Mr. Trobaugh's request at the Commission meeting in May.

### **Public Comment Period:**

Margot Withrow raised questions about no smoking in state facilities, questioned if anyone was representing Smoky Mountain, and commented that there are no services available to debrief families following a family member's suicide. Ms. Baker informed her that the Advocacy Section is available within the NC DMH/DD/SAS to talk with her regarding the availability of services.

*There being no further business, the meeting adjourned at 3:48 pm.*